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In re Application of :
OBERHAUSER, Roy, et al. :
U.S. Application No.: 10/551,454 : DECISION ON PETITION
PCT No.: PCT/EP2004/003301 :
International Filing Date: 29 March 2004 :
Priority Date: 01 April 2003 :
Atty Docket No.: 32860-000953/US :
For: METHOD AND ARRAY FOR :
CHANGING SOFTWARE OR :
SOURCE CODE :
:

This decision is issued in response to the "Petition Under 37 CFR 1.181 To Withdraw Holding Of Abandonment" filed 03 March 2008. No petition fee is required.

BACKGROUND

On 29 March 2004, applicants filed international application PCT/EP2004/003301. The international application claimed a priority date of 01 April 2003, and it designated the United States. On 14 October 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 01 October 2005.

On 30 September 2005, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee, a translation of the international application into English, and an executed declaration.

On 24 May 2006, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures" (Form PCT/DO/EO/922) indicating that sequence listing materials were required.

On 25 February 2008, the DO/EO/US mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) indicating that the application was abandoned based on applicants' failure to respond to the notification mailed 24 May 2006.

On 03 March 2008, applicants filed the "Petition Under 37 CFR 1.181 To Withdraw Holding Of Abandonment" considered herein. The petition asserts that applicants never received the notification mailed 24 May 2006 and that the holding of abandonment should therefore be

withdrawn. The petition notes that the application file viewable on Private Pair does not include any Notification mailed 24 May 2006, and applicant has therefore still not seen such Notification.¹

DISCUSSION

The present application involves computer software; the invention does not contain nucleotide and/or amino acid sequence disclosures. Accordingly, the “Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures” (Form PCT/DO/EO/922) mailed 24 May 2006 was issued in error and is therefore appropriately vacated.

The Notification Of Abandonment (Form PCT/DO/EO/909) mailed 28 February 2008, based as it was on applicants’ failure to respond to the now vacated Form PCT/DO/EO/922 mailed 24 May 2006, is therefore also appropriately vacated.

Based on the above, applicants’ present petition requesting withdrawal of the holding of abandonment based on applicants’ failure to receive the previously mailed notification is now moot.

A review of the present application file reveals that the declaration filed herein is defective. Specifically, the hand-written indications regarding the address of inventor Christian REICHEL have not been initialed or signed. Any changes made in ink in the application or declaration prior to signing should be initialed and dated by the applicants prior to execution of the declaration. The Office will not consider whether non-initialed and/or non-dated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration (see MPEP 605.04(a)). In addition, the four pages of declaration filed here appear to be a compilation of two separate three-page declarations, and as such are not acceptable under 37 CFR 1.497 (See MPEP § 201.03(II)(B): “Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration.”). The compilation is evident from the fact that the declaration submitted includes one copy of “Page 1” and “Page 2,” but two different copies of “Page 3.” Finally, the English translation contained in the declaration is incomplete in that the title of the application has not been translated on the English side of the declaration form.

CONCLUSION

The “Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures” (Form PCT/DO/EO/922) mailed 24 May 2006 and the Notification Of Abandonment (Form PCT/DO/EO/909) mailed 28 February 2008 are hereby **VACATED**.

Because the holding of abandonment has been vacated, applicants’ petition to withdraw the holding of abandonment is **DISMISSED AS MOOT**.

¹ A courtesy copy of the Notification mailed 24 May 2006 is attached to the present decision.

The application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) requiring the submission of an acceptable declaration under 37 CFR 1.497 and the surcharge for filing such declaration later than thirty months after the priority date.

RRR

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Encl.: Copy of Form PCT/DO/EO/922 mailed 24 May 2006 (now vacated)